

**CITY OF MONTEBELLO**

**CITY COUNCIL AGENDA STAFF REPORT**

**TO:** Honorable Mayor and Members of the City Council  
**FROM:** Danilo Batson, Assistant City Manager  
**BY:** Captain Luis Lopez  
**SUBJECT:** Professional Service Agreement for Photo Red Light Camera Enforcement  
**DATE:** December 13, 2017

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**RECOMMENDATION**

It is recommended that the City Council approve a Professional Services Agreement for the Red Light Photo Enforcement Program with Redflex Traffic Systems and authorize the City Manager or designee to execute the agreement on behalf of the City.

**BACKGROUND**

The Montebello Police Department utilizes red light photo enforcement at six (6) intersections throughout the community with eight (8) approaches. The total number of incidents captured at all intersections for 2016 was 24,420, for which 16,134 were available for prosecution.

With limited resources for traffic enforcement, intersections monitored by the red light photo enforcement system serve as a force multiplier in dealing with red light traffic violations and collisions.

The Montebello Police Department currently uses Redflex Traffic Systems to monitor and operate the Red Light Photo Enforcement program. The contract has expired and the Police Department is currently on a 2-month extension for services.

The system is operated at the Police Department by three (3) part-time police officers. The salaries of the part-time police officers are funded by the revenue generated by the citations issued by these red light cameras..

**ANALYSIS**

**RFP Process**

Pursuant to the City of Montebello Municipal Code (MMC) and the fiscal policies recently adopted by City Council Resolution No. 17-40, the Montebello Police

Department released a Request for Proposal (RFP 18-11) on August 3, 2017. The RFP sought proposals from qualified firms to provide all labor, equipment, software and incidentals for the monitoring and enforcement of the City's red light photo enforcement program at 6 intersections, with 8 approaches.

Consistent with the Municipal Code, the RFP was posted on [www.PlanetBids.com](http://www.PlanetBids.com) and on the City's website. The RFP included detailed information on the services needed, the scope of work, the proposal submission process, closing date and time, and other applicable submittal requirements. The RFP also included information on the City's red light photo enforcement program, procedures, schedule of fees, and other information needed by consultants to submit a proposal/bid.

Three (3) sealed proposals/bids were received by the City on or before the submission deadline, but remained unopened until the RFP period expired. No submittals were received after the deadline. The Montebello Police Department has analyzed the proposals and is presenting a recommendation to the City Council as detailed in this report.

### Proposals Received

Staff reviewed the three (3) responsive proposals thoroughly and found that all firms submitting proposals met the qualifications as outlined in the RFP. All firms are capable of performing the requested services for the Red Light Photo Enforcement Program.

Below is a summary table detailing these factors from the responding firms:

Firm	Cost Per Approach	Number of Approaches	Total monitored intersections	Monthly cost
Redflex	\$ 2500.00	8	6	\$ 20,000.00
Gatso	\$ 4950.00	8	6	\$ 39,600.00
Condvnt	\$ 3850.00	8	6	\$ 30,800.00

### Firm Qualifications / Experience

Redflex Traffic Systems, Inc. is a wholly owned subsidiary of Redflex Holdings Limited (collectively "Redflex"), an Australian holding company publically traded on the Australian Stock Exchange ("ASX"), which owns and operates one of the world's largest network of digital speed and red light cameras. Redflex's predecessor in interest corporation was formed and initially incorporated in California in 1998 and in August 2002 was reincorporated in Delaware.

Redflex Traffic System has been servicing photo enforcement programs across the world for nearly twenty (20) years, making them the longest established photo enforcement service provider in North America. Redflex has partnered with over 500 communities in that time, and 24 in California, including, Culver City, Garden Grove, Oxnard, and Solana Beach.

## **FISCAL IMPACT**

The Redflex Traffic System Agreement will be funded entirely by fees paid by revenue generated by the red light enforcement citations. The part-time police officers that manage the system are also funded through the revenue of the red light violation citations. There would not be a direct cost to the City.

## **SUMMARY**

The City Council will consider awarding a contract to Redflex Traffic System for the Red Light Photo Enforcement Program. The contract term will be five (5) years with two (2), one-year extension option, for a total contract term not to exceed seven (7) consecutive years.

## **ATTACHMENTS**

Bid Summary 18-11  
Proposed Agreement

**Bid Detail****Bid Information**

**Project Title** Photo Red Light Enforcement Services for the City of Montebello  
**Invitation No.** 18-11  
**Bid Posting Date** August 3, 2017 10:48 AM (Pacific)  
**Project Stage** Closed  
**Bid Due Date** September 1, 2017 5:00 PM (Pacific)  
**Response Format** Electronic only  
**Link to Project on Public Site** <https://www.planetbids.com/portal/portal.cfm?CompanyID=33072&BidID=38267>  
**Reference ID** 18-11

**Project Type** RFP (Request For Proposal)  
**Response Types** Response File  
**Type of Award** Lump Sum  
**Categories** 443130 - Camera and Photographic Supplies Stores  
 561990 - All Other Support Services  
 900001 - Cybersecurity

**License Requirements**

**Department** Police  
**Address** 1600 W Beverly Blvd , Montebello, California  
**County** Los Angeles

**Bid Valid**

**Liquidated Damages**  
**Target Bid Amount** \$0.00  
**Estimated Bid Value**  
**Start/Delivery Date**  
**Project Duration**  
**Prevailing Wage** Yes  
**Cooperative Bid** No  
**Piggy-backable** No  
**eBid Notes**  
**Preferences**  
**Restriction Type** None  
**Restricted To**

**Pre-Bid Meeting Information**

**Pre-Bid Meeting** No

**Online Q&A**

**Online Q&A** Yes  
**Q&A Cutoff Date** August 15, 2017 5:00 PM (Pacific)

**Contact Information**

**Contact Info** Danilo Batson - 323-887-1200  
 dbatson@cityofmontebello.com

**Bids to**  
**Owner's Agent**

**Description**

**Scope of Services** Provide all labor, equipment, materials, software and incidentals for the monitoring and enforcement for the implementation the City's Red Light Photo Enforcement Program at 6 intersections, with 8 approaches, and as detailed in the City of Montebello's Request for Proposals No. 18-11

**Other Details**  
**Notes**

**Local Programs & Policies**

**Bid Detail**

**Special Notices** Please do not email directly.  
 Please Direct all questions to the Q&A section.  
 Vendors MUST BE a registered on PlanetBids. Vendor must be a prospective bidder for this RFP in order to submit a valid bid.  
 City Hall Business hours are Monday - Thursday 7:30 am-5:30 pm (excluding holidays)

**Downloadable Files**

File Title	File Name	File Size	On Server	Uploaded Date	Visible
RFP 18-11	RFP 18-11 Red Light Photo Enforcement Services.pdf	151.6 kb	On Server	08/03/2017	No

Download File Fee \$0.00

**Hard Copy Plans**

Title/Description	Receive From	Plan Fee	Mailing Fee	Refund
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## Q &amp; A

Vendor	Submit Date	Question	Answer	Release Date	Set
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/07/2017 10:15 AM (Pacific)	PHOTO RED LIGHT CAMERA ENFORCEMENT SERVICES: Can you please provide a copy of the existing Red Light Camera Enforcement contract with any associated amendments and pricing exhibits?	See attachments in addendum 2	08/24/2017 12:37 PM (Pacific)	1.1
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/11/2017 11:45 AM (Pacific)	PHOTO RED LIGHT CAMERA ENFORCEMENT SERVICES: Can the City provide a report on events, violations, issuance and payment rates over the last 12 months?	See attachments in addendum 2. Also, the total number of incidents captured at all intersections for 2016 was 24,420, for which 16,134 were available for prosecution.	08/24/2017 12:37 PM (Pacific)	1.2
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/14/2017 10:29 AM (Pacific)	Is the City supplying the power to the poles? Is that power metered and who bears the cost of the power?	The provisions of all necessary electrical services to the Designated Intersection Approaches will be sole responsibility of the Customer (City).	08/24/2017 12:37 PM (Pacific)	1.3
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/15/2017 7:01 AM (Pacific)	Does the City intend to continue enforcing the same 8 approaches at the same 6 intersections?	The City intends on continuing enforcing the same 8 approaches at the same 6 intersections. However, the City reserves the right, in its sole discretion with adequate prior notice to the Vendor, to increase the number of intersections included in the Program. These approaches will be analyzed in cooperation with the Vendor.	08/24/2017 12:37 PM (Pacific)	1.4
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/15/2017 7:02 AM (Pacific)	Does the City or the current red light vendor own the above ground infrastructure?	The current vendor owns the above ground and below ground infrastructure.	08/24/2017 12:37 PM (Pacific)	1.5
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/15/2017 7:03 AM (Pacific)	May the new vendor utilize any of the existing red light camera equipment or infrastructure either above ground or below ground?	The current vendor owns the above and below ground infrastructure. Pursuant to the current agreement the current vendor will be responsible for the removal of any and all equipment the vendor installed.	08/24/2017 12:37 PM (Pacific)	1.6
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/15/2017 7:04 AM (Pacific)	Section 5-5.2 (e) and (f) require reporting on total citation paid and total revenue collected. Will the City and or Court be providing this information to the vendor?	The Court will provide total revenue collected.	08/24/2017 12:37 PM (Pacific)	1.7
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/15/2017 7:05 AM (Pacific)	Will the City accept a double sided letter of interest? Will the City accept smaller font in graphics than 11 point font?	In order to accommodate this request, Section 6-2.2 of the Request for Proposals have been modified as followed:  6-2.2 Letter of Interest. Highlight the primary features of the Vendor's proposal. Based on the requirements in Section 5, describe how your company proposes to supply the services requested in this RFP. The Letter of interest (LOI) shall not exceed thirty (30) letter sized pages. Type font should not be less than the 11-point used in this document. Additional supporting materials relevant to this request may be provided in clearly marked appendices and on any font size.	08/24/2017 12:37 PM (Pacific)	1.8
CONDUENT STATE & LOCAL SOLUTIONS, INC	08/15/2017 8:19 AM (Pacific)	Will the City consider extending the due date of the RFP by another week or two? With only 22 calendar days and just 17 business days to respond, the turnaround time is very short.	Per Addendum #1 the due date has been extended.	08/24/2017 12:37 PM (Pacific)	1.9

**Q & A**

<b>Vendor</b>	<b>Submit Date</b>	<b>Question</b>	<b>Answer</b>	<b>Release Date</b>	<b>Set</b>
	08/24/2017 4:23 PM (Pacific)	Section 5-3.1, L.- Does the City anticipate conducting maintenance on the photo enforcement systems? Or does the City want to oversee any maintenance performed on the photo enforcement systems?	The City will want to oversee any maintenance performed but the City will not be performing the maintenance.	08/24/2017 4:23 PM (Pacific)	2.1
		-Redflex Traffic Systems, Inc.			
	08/24/2017 4:23 PM (Pacific)	Section 5-2.17 - Does the City want the photo enforcement systems set up and configured the same as they currently are or is the City looking for a new configuration of photo enforcement systems?	The configuration must be able to capture the front and rear of the violator vehicle and the driver's face which is the current configuration.	08/24/2017 4:23 PM (Pacific)	2.2
		-Redflex Traffic Systems, Inc.			

**Addenda****Addendum - Released**

**Addendum Num** 1  
**Addendum Date** 08/22/2017  
**Release Date** 08/22/2017  
**Title** Addendum #1  
**Description** Extension of Due Date to September 1, 2017 at 5:00pm

**Attachments**

File Title	File Name	Status
Addendum 1	RFP 18-11 Addendum No 1.pdf	On Server

**Addendum - Recalled**

**Addendum Num** 2  
**Addendum Date** 08/24/2017  
**Release Date** 08/24/2017  
**Title** Addendum #2  
**Description** Answered questions and informational attachment.

**Attachments**

File Title	File Name	Status
Addendum 2 w/ attachment	RFP 18-11 Addendum 2 with attachment.pdf	On Server

**Addendum - Released**

**Addendum Num** 3  
**Addendum Date** 08/24/2017  
**Release Date** 08/24/2017  
**Title** Q and A Set 1  
**Description** Q and A Set 1 has been released for this project.

**Attachments**

No Attachments

**Addendum - Released**

**Addendum Num** 2  
**Addendum Date** 08/24/2017  
**Release Date** 08/24/2017  
**Title** Addendum #2  
**Description** Addendum #2 with attachments.

**Attachments**

File Title	File Name	Status
Addendum #2	RFP 18-11 Addendum No 2.pdf	On Server
Attachment 1	Attachment 1.pdf	On Server
Attachment 2	Attachment 2.pdf	On Server



**Addenda**

**Addendum - Released**

**Addendum Num** 4  
**Addendum Date** 08/24/2017  
**Release Date** 08/24/2017  
**Title** Q and A Set 2  
**Description** Q and A Set 2 has been released for this project.

**Attachments**

No Attachments

**Addendum - Released**

**Addendum Num** 5  
**Addendum Date** 08/24/2017  
**Release Date** 08/24/2017  
**Title** Bid Information Updated  
**Description** Disclaimers included under special notices in the Bid Information tab concerning:  
Office Hours  
Vendor Registration  
Q&A

**Attachments**

No Attachments

**Bid Results**

3 Bid Results

**Bidder Details**

**Vendor Name** GATSO USA  
**Address** 900 Cummings Center  
 Suite 222-T  
 Beverly, MA 01915  
 United States  
**Respondee** John McDonald  
**Respondee Title** Proposal Manager  
**Phone** 978-922-7294 Ext. 202  
**Email** j.mcdonald@gatso.com  
**Vendor Type**

**Bid Detail**

**Bid Format** Electronic  
**Submitted** September 1, 2017 10:37:08 AM (Pacific)  
**Delivery Method**  
**Bid Responsive**  
**Bid Status** Submitted  
**Confirmation #** 113128  
**Ranking** 0  
**Amount** \$0.00

**Respondee Comment**

Preparing Response.

**Buyer Comment****Attachments**

File Title	File Name	File Type
RFP 18-11 Response	GATSO Montebello RFP Response.pdf	Response File

**Bid Results****Bidder Details**

**Vendor Name** Redflex Traffic Systems, Inc.  
**Address** 5651 West Talavi Boulevard Suite 200  
 Glendale, AZ 85306-1893  
 United States  
  
**Respondee** Dawn McCrory  
**Respondee Title** Proposal Manager  
**Phone** 623-207-2230 Ext.  
**Email** dmccrory@redflex.com  
**Vendor Type**

**Bid Detail**

**Bid Format** Electronic  
**Submitted** September 1, 2017 9:02:43 AM (Pacific)  
**Delivery Method**  
**Bid Responsive**  
**Bid Status** Submitted  
**Confirmation #** 115037  
**Ranking** 0  
**Amount** \$0.00

**Respondee Comment****Buyer Comment****Attachments**

File Title	File Name	File Type
Redflex's Proposal for RFP No. 18-11	RedflexProposalforMontebelloCA RFPNo1811forPhotoRedLightEnforcementServices.pdf	Response File

**Bid Results****Bidder Details**

**Vendor Name** CONDUENT STATE & LOCAL SOLUTIONS, INC  
**Address** 12410 Milestone Center Dr.  
 5th Floor  
 Germantown, CA 20876  
 United States  
**Respondee** Scott Stewart  
**Respondee Title** Senior Sales Executive  
**Phone** 909-948-0776 Ext.  
**Email** scott.stewart@conduent.com  
**Vendor Type**

**Bid Detail**

**Bid Format** Electronic  
**Submitted** September 1, 2017 11:28:39 AM (Pacific)  
**Delivery Method** e-bid upload-PlanetBids/11:23 am PT, 9/1/17  
**Bid Responsive**  
**Bid Status** Submitted  
**Confirmation #** 115052  
**Ranking** 0  
**Amount** \$0.00

**Respondee Comment****Buyer Comment****Attachments**

File Title	File Name	File Type
Red Light RFP 18-11 response	Conduent Response Photo Red Light Enforcement Services for the City of Montebello RFP No 18 11.pdf	Response File

AGREEMENT NO. \_\_\_\_\_

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MONTEBELLO  
AND [CONTRACTOR'S NAME] FOR RED LIGHT PHOTO ENFORCEMENT  
SERVICES (RFP NO. 18-11)**

COVER PAGE

Contractor: [insert name of contractor]  
Responsible Principal of Contractor: [insert name, title]  
Notice Information - Contractor: [insert name of contractor]  
[insert street address]  
[insert city, state, zip code]  
Attention: [insert name, title]  
Phone: [insert phone number]  
Facsimile: [insert fax number]

City of Montebello  
1600 W. Beverly Blvd.  
Montebello, CA 90640

Attention: \_\_\_\_\_

City Manager

Telephone: (323) 887-1369

Commencement Date:

[insert commencement date]

Termination Date: [insert termination date]

Consideration: Total not to exceed \$[insert amount] (includes all applicable sales tax); and more particularly described in Exhibit C

This Contract is made by and between the City of Montebello ("City"), a California municipal corporation ("City"), and [Contractor's Name], a [State incorporated in] corporation ("Contractor").

The City and Contractor (sometimes herein individually a "Party", and jointly the "Parties") agree as follows:

## **1.0 EMPLOYMENT OF CONTRACTOR**

City agrees to engage Contractor to perform, and Contractor agrees to perform for City, the services as hereinafter set forth.

## **2.0 SCOPE OF SERVICES**

2.1 Contractor shall perform all work necessary to complete the services set forth in the Request for Proposals No. 18-11 dated August 3, 2017, attached hereto as Exhibit "A", and Contractor's proposal to the City ("Proposal") dated \_\_\_\_\_, attached hereto as Exhibit "B", both of which are attached to and incorporated into this Contract, by reference.

2.2 All services shall be performed to the satisfaction of City.

2.3 All services shall be performed according to the standards then prevailing in the profession in the State of California.

## **3.0 PERSONNEL**

3.1 Contractor represents that it employs, or will employ, at its own expense, all personnel required to perform the services under this Contract.

3.2 Contractor shall not subcontract any services to be performed by it under this Contract without prior written approval of City.

3.3 All of the services required hereunder will be performed by Contractor or by City-approved subcontractors. Contractor, and all personnel engaged in the work, shall be fully qualified and authorized or permitted under State and local law to perform such services.

## **4.0 TERMS**

The term of this Contract shall commence on the date first set forth above and continue for a five (5) years term with a two (2), one-year extension option, for a total contract term not to exceed seven (7) consecutive years, unless and until terminated at an earlier date pursuant to the provisions thereof.

## **5.0 COMPENSATION AND FEES**

5.1 Contractor has established rates for the City which are comparable to and do not exceed the best rates offered to other governmental entities in and around Los Angeles County for the same services. For satisfactory and timely performance of the

services, the City will pay Contractor in accordance with the payment schedule and rates set forth in Exhibit "C", attached and incorporated herein.

5.2 Contractor's grand total compensation for each year during the term of this Contract, including change orders, shall not exceed **[state amount]** without the prior written authorization of the City.

5.3 Contractor shall, at its sole cost and expense, furnish all necessary and incidental labor, material, supplies, facilities, equipment and transportation which may be required for furnishing services pursuant to this Contract. Materials shall be of the highest quality. The above Contract fee shall include all staff time and all clerical, administrative, overhead, insurance, reproduction, telephone, air travel, auto rental, subsistence, and all related costs and expenses.

## **6.0 PAYMENT**

6.1 Contractor shall submit monthly invoices to the City for the services, authorized expenses, and authorized extra work actually performed or incurred in the immediately preceding calendar month.

6.2 Each such invoice shall state the basis for the amount invoiced, including a detailed description of the services completed, the number of hours spent, reimbursable expenses incurred and any extra work performed.

6.3 Contractor shall submit a progress report with each invoice that describes in reasonable detail the services and the extra work, if any, performed in the immediately preceding calendar month.

6.4 Contractor understands and agrees that invoices which lack sufficient detail to measure performance will be returned and not processed for payment.

6.5 City will pay Contractor the amount invoiced within thirty (30) days after the City approves the invoice.

6.6 Payment of such invoices shall be payment in full for all services, authorized costs and authorized extra work covered by that invoice.

## **7.0 CHANGE ORDERS**

The Director of the Department of Finance shall have the authority to issue change orders for administrative and non-material changes to the scope of services and to the time for performance as long as the change orders do not increase the compensation due to Contractor under this Contract and as long as the time is not extended beyond three years. The City Manager, shall have the authority to issue administrative change orders to increase the compensation due Contractor under this Contract, but the combined total amount of such change orders shall not exceed Fifty Thousand Dollars (\$50,000) in any calendar year.

## **8.0 CITY'S RESPONSIBILITY**

City shall cooperate with Contractor as may be reasonably necessary for Contractor to perform its services; and will give any required decisions as promptly as practicable so as to avoid unreasonable delay in the progress of Contractor's services.

## **9.0 GENERAL TERMS AND CONDITIONS**

### **9.1 INDEPENDENT CONTRACTOR.**

9.1.1 It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent contractor, and is not an agent or employee of City and shall furnish such services in its own manner and method except as required by this Contract. Further, Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

9.1.2 Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of the City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

9.2 **CONTRACTOR NOT AGENT.** Except as the City may authorize in writing, Contractor and its subcontractors shall have no authority, express or implied, to act on behalf of or bind the City in any capacity whatsoever as agents or otherwise.

9.3 **OWNERSHIP OF WORK.** All reports, drawings, plans, specifications, computer disks, memory disk/card and printouts, studies, memoranda, computation sheets and other documents prepared by Contractor in furtherance of the work shall be the sole property of City and shall be delivered to City whenever requested. Contractor shall keep such documents and materials on file and available for audit by the City for at least three (3) years after completion or earlier termination of this Contract. Contractor may make duplicate copies of such materials and documents for its own files or for such other purposes as may be authorized in writing by the City.

9.4 **CORRECTION OF WORK.** Contractor shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, services and other work, without



additional cost to the City. The performance or acceptance of services furnished by Contractor shall not relieve the Contractor from the obligation to correct subsequently discovered defects, inaccuracy or incompleteness.

9.5 WAIVER. A parties' waiver of any term, condition, breach or default of this Contract shall not be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.

9.6 SUCCESSORS. This Contract shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors and/or assigns.

9.7 NO ASSIGNMENT. Contractor shall not assign or transfer this Contract or any rights hereunder without the prior written consent of the City, which approval may be withheld in the City's sole discretion. Any unauthorized assignment or transfer shall be null and void and shall constitute a material breach by the Contractor of its obligations under this Contract. No assignment shall release the original parties or otherwise constitute a novation.

9.8 COMPLIANCE WITH LAWS. Contractor shall comply with all Federal, State, County and City laws, ordinances, rules and regulations, which are, as amended from time to time, incorporated herein and applicable to the performance hereof. Violation of any law material to performance of this Contract shall entitle the City to terminate the Contract and otherwise pursue its remedies.

9.9 ATTORNEY'S FEES. If any action at law or in equity is brought to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorney's fees, costs, experts fees, and expenses incurred in addition to any other relief to which such party may be entitled.

9.10 APPLICABLE LAW. This Contract, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California.

9.11 ENTIRE AGREEMENT. This Contract, including any exhibits attached hereto, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

9.12 WRITTEN AGREEMENT. This Contract may only be changed by written amendment signed by Contractor and the City Manager or other authorized representative of the City, subject to any requisite authorization by the City Council. Any oral representations or modifications concerning this Contract shall be of no force or effect.

9.13 SEVERABILITY. If any provision in this Contract is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Contract, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Contract.

9.14 ORDER OF PRECEDENCE. In case of conflict between the terms of this Contract and the terms contained in any document attached as an Exhibit or otherwise incorporated by reference, the terms of this Contract shall strictly prevail. The terms of the City's Request for Proposals shall control over the Contractor's Proposal.

9.15 CHOICE OF FORUM. The parties hereby agree that this Contract is to be enforced in accordance with the laws of the State of California, is entered into and/or is to be performed in the City of Montebello and that all claims or controversies arising out of or related to performance under this Contract shall be submitted to and resolved in a forum within the County of Los Angeles at a place to be determined by the rules of the forum.

9.16 DUPLICATE ORIGINALS. There shall be two (2) fully signed copies of this Contract, each of which shall be deemed an original.

9.17 TIME OF ESSENCE. Time is strictly of the essence of this contract and each and every covenant, term and provision hereof.

9.18 AUTHORITY OF CONTRACTOR. The Contractor hereby represents and warrants to the City that the Contractor has the right, power, legal capacity and authority to enter into and perform its obligations under this Contract, and its execution of this Contract has been duly authorized.

9.19 INDEMNITY.

9.19.1 Professional Liability. When the law establishes a professional standard of care for Contractor's Services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Sub-consultants (or any City or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this agreement.

9.19.2 Indemnity for other than professional liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability

(including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor or by any individual or agent for which Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor.

9.20 INSURANCE. Contractor shall procure and maintain for the duration of the Contract, at its own expense, the following types and minimum insurance coverage:

- 9.20.1 Commercial General Liability Insurance in an amount no less than \$1,000,000 per occurrence with an aggregate of no less than twice the per occurrence limit. Such insurance shall be endorsed to name the City and its respective officers, agents, and employees as additional insured. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its sub-consultants.
- 9.20.2 Business Automobile Liability Insurance in an amount no less than \$1,000,000 per accident. Such insurance shall include coverage for owned, hired, and non-owned autos.
- 9.20.3 Workers' Compensation Insurance meeting all statutory benefit requirements of the Labor Code of the State of California and Employers Liability insurance with a minimum of \$1,000,000 per claim. The workers' compensation insurance shall be endorsed to waive any right to subrogation against the City and its officers, agents, and employees. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its sub-consultants.
- 9.20.4 Professional Errors & Omissions Insurance with a minimum of \$2,000,000 limit per claim.

- 9.20.5 Crime/Employee Dishonesty Coverage of \$1,000,000 to include employee dishonesty, disappearance, theft, and forgery or alteration coverage in a form and issued by an insurance or bonding company or companies acceptable to the City.
- 9.20.6 Proof of insurance Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- 9.20.7 City's rights of enforcement In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.
- 9.20.8 Acceptable Insurers. All insurance policies shall be issued by an insurance company with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- 9.20.9 Contractor's Insurance Shall be primary with regards to any claim for damages arising out of the work performed under this Contract. The City, its officers, agents, and employees shall be named as additional insured's under the Commercial General Liability policy. The insurer shall provide 30 days written notice via a special endorsement to the City regarding non-renewal, expiration or any changes in coverage. Appropriate insurance certificates and endorsements shall be provided to the City for review and approval prior to execution of the Contract.

9.21 NOTICES. Any notice or demand to be given by one party to the other be given in writing and by personal delivery or prepaid first-class, registered or certified mail, addressed as follows. Notice simply to the City of Montebello or any other City department is not adequate notice.

If to the City:

1600 W. Beverly Blvd.  
Montebello, CA 90640  
Attention: City Manager  
Telephone: (323) 887-1369

If to the Contractor:

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Any such notice shall be deemed to have been given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

9.22 TERMINATION FOR CONVENIENCE. City may terminate this Contract in whole or in part at any time, for any cause or without cause, upon fifteen (15) calendar days' written notice to Contractor. If the Contract is thus terminated by City for reasons other than Contractor's failure to perform its obligations, City shall pay Contractor a prorated amount based on the services satisfactorily completed and accepted prior to the effective date of termination. Such payment shall be Contractor's exclusive remedy for termination without cause.

9.23 DEFAULT. In the event either party materially defaults in its obligations hereunder, the other party may declare a default and terminate this Contract by written notice to the defaulting party. The notice shall specify the basis for the default. The Contract shall terminate unless such default is cured before the effective date of termination stated in such notice, which date shall be no sooner than ten (10) days after the date of the notice.

Termination for cause shall relieve the terminating party of further liability or responsibility under this Contract, including the payment of money, except for payment for services satisfactorily and timely performed prior to the service of the notice of termination, and except for reimbursement of (1) any payments made by the City for service not subsequently performed in a timely and satisfactory manner, and (2) costs incurred by the City in obtaining substitute performance.

9.24 MAINTENANCE AND INSPECTION OF RECORDS. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor's records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the Contract and/or is paying only the amounts to which Contractor is properly entitled under the Contract or for other purposes relating to the Contract.

The Contractor shall maintain and preserve all such records for a period of at least three (3) years after termination of the Contract.

The Contractor shall maintain all such records in the City of Montebello. If not, the Contractor shall, upon request, promptly deliver the records to the City of Montebello or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Montebello, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

9.25 CONFLICT. Contractor hereby represents, warrants, and certifies that no member, officer or employee of the Contractor is a director, officer or employee of the City of Montebello, or a member of any of its boards, commissions or committees, except to the extent permitted by law. Contractor shall avoid all conflicts of interest or appearance of conflicts of interest in performance of this Contract.

9.26 CONFIDENTIALITY OF INFORMATION. All data, documents, or other information developed or received, verbally or in writing, in performance of the agreement between the Contractor and the City are confidential and not to be disclosed to any person except as authorized by the City, the Contractor, or as required by law. Contractor shall have the responsibility to develop and implement processes and procedures relating to the protection of the City's electronic data, including a suitable security and back-up system for all stored data and a written policy with respect to disaster recovery, physical and electronic data security, and electronic data retention, as per the standards for Accreditation with Excellence by the California Association of Joint Powers Authorities (CAJPA).

9.27 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES. Contractor certifies and represents that, during the performance of this Contract, it and any other parties with whom it may subcontract shall adhere to equal employment opportunity practices to assure that applicants, employees and recipients of service are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition, sexual orientation or marital status. Contractor further certifies that it will not maintain any segregated facilities. Contractor further agrees to comply with The Equal Employment Opportunity Practices provisions as set forth in Exhibit "D".

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date stated in the introductory clause.

City of Montebello, a California general law city and California municipal corporation

[CONTRACTOR'S NAME, a [State incorporated in] corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

City Manager

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_

Irma Barajas, City Clerk

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

Arnold Alvarez-Glasman, City Attorney

## **EXHIBIT C TO PROFESSIONAL SERVICES AGREEMENT**

### **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS**

A. Contractor certifies and represents that, during the performance of this Agreement, the contractor and each subcontractor shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex, or age. Contractor further certifies that it will not maintain any segregated facilities.

B. Contractor agrees that it shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of Contractor, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, handicap, sex or age.

C. Contractor agrees that it shall, if requested to do so by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class.

D. Contractor agrees to provide the City with access to, and, if requested to do so by City, through its awarding authority, provide copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

E. Nothing contained in this Agreement shall be construed in any manner as to require or permit any act which is prohibited by law.